

The May 27, 2015 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of the Town Hall.

Chairman Matthew Zuker called the meeting to order at 7:02 p.m. with the following members present:

Matthew Zuker, Chairman  
James DeCelle, Vice Chairman  
Craig Hiltz, Clerk  
Mary Jane Coffey, Member  
Susanne Murphy, Member  
Timothy Foley, Associate Member

**7:00 pm – Evria & Evelina Gourdoukis – Case #4-15**

Mr. Zuker read the public hearing notice for **EVRIA & EVELINA GOURDOUKIS, Case #4-15** with respect to property located at 263 High Plain Street, Walpole, MA and shown on the Assessors Map 35 and Lot Nos. 375 & 374, Residence B Zoning District.

The application is for:

A VARIANCE from Section 6-B of the Zoning By-Laws to allow the reconfiguration of three (3) parcels of land comprised of multiple lots each into two (2) lots, one of which requires an area variance as shown on a plan entitles Zoning Board of Appeals, #263 High Plain Street, Plan of Land in Walpole, MA, Scale: 1" = 20', March 17, 2014, Glossa Engineering, Inc., 46 East Street, East Walpole, MA 508-668-4401

Mr. Zuker stated that the Zoning Board has previously had a public hearing on this before. He went on to say that the Board is interested to hear what has changed.

Phil Macchi the attorney representing the Applicants said that they have been before the Zoning Board of Appeals before. We withdrew our previous application on September 24, 2014. The property is in a Residence B zoning district. The property is comprised of 3 different parcels; it would appear that the parcels were converted/merged into one lot in 2005. We are now trying to reconfigure these lots. There were 2 prior applications to do this before regarding this property. The 1<sup>st</sup> application proposed to take the three lots and make 2, 15,000 square foot lots. The problem with that was the 2 lots were both nonconforming. A second application was filed but that made the lot more non-conforming then it already was. On page 3 of the Memorandum in Support of Application for Variance that I submitted to your Board prior, the zoning table and a new design redone by John Glossa is shown. Both Lots have the required frontage and meet the

80% circle. Lot 2 complies 100%, the new lot 1 has been changed to create frontage, sidelines and setbacks. The only thing it lacks is the area. All of the prior applications that have been filed have never provided that conformity. We took an analysis of the area. All of the lots that you see in red (referring to a picture he brought) were created back in 1911, had the Applicant's land merged back in 1911 they would have had protection but it did not. This is a unique situation with a lot that is almost like an island. Mr. Macchi went on to say that he did listen to the Board from the last meeting and asked the abutter if he could buy some land. Unfortunately there was not enough land for the applicant to buy. There is no other way to remedy this without actually having the benefit of a variance. There is a hardship and a human aspect to consider. The Board's decision affects the community. We can create 2 lots, one of which is conforming the other is conforming in all respects other than the area. This property is frozen the way it is. It really is a hardship because there is nothing to do with that land. To say there is not a hardship would be hard to say. You have a resident paying for land that they cannot effectively use. In this case there is a financial hardship as well. If the Board granted this variance, from High Plain Street it would not look any different. The house would not be a McMansion but it also would not be too small either. Mr. Macchi asked the Board to look at Memorandum he submitted, exhibit B contains all of the letters from the abutters in support of this project. Mr. Macchi went on to say that, in all of the years he has been doing this he has never had so many people support a project. This will benefit the whole neighborhood. High Plain Street is a major road in Walpole. We want to make the house look good and create a buffer. If the Board approved this then the next step would be the Planning Board.

Mr. Zuker stated that the Board would like to commend Mr. Macchi for his passionate arguments in favor of this project and to the applicants for being persistent. These are tough cases for the Board. When it comes to variances we are very careful when we hand them out.

Mr. DeCelle stated that on some of the lots Mr. Macchi is referencing in his pictures, we do not know the area. Are they 10,000 square feet or under.

Mr. Macchi stated that they might be 10,000 Sq. ft. but it is nowhere near 20,000 Sq. ft.

Mr. Zuker stated that they will now open the hearing up to the public. Name and address for the record.

Robert Snee of 254 High Plain Street said that he lives across the street and thinks this project would be a great idea.

Ms. Murphy asked how many square feet his lot was.

Mr. Snee stated that his lot is 24,000 square feet and said he is right next to Hummingbird Lane.

Elsie Gleichauf of 277 High Plain Street said that she lives on the corner of Sybil and High Plain Street stated that she thinks the world of this project and is for it.

Anthony Scafati of 264 High Plain stated that he is in favor of the project and would like to see a quality builder to build the new house. He is OK with the non-conforming property.

Janis Selett of 257 High Plain Street said that she believes she is the largest abutter. She is very much in favor of the project. She went on to say that her lot is long and narrow. It bothers her that the property is transferred and did not merge into one.

Doug Shea of 2 Change Street said that he has a long, skinny lot as well. Our property backs into the Applicant's property. We are in favor of this project. Most of the lots are long and narrow.

Kristin Morrison of 6 Dupee Street said that she is in total favor of this variance. The Applicant's family is wonderful and she would like the hardship to be taken off of the Applicant. It would also make a difference for the people driving down High Plain as well.

Amy Coyne of 3 Dupee Street said that she is in favor of the variance as well.

Mr. Zuker asked about the Puhlick's (11 Sybil Street) who are the Applicant's direct neighbors and were against the project prior.

Mr. Macchi stated that 3 out of 4 neighbors are here today and went on to say that he had spoken with the Puhlick family and they were OK with the project.

Mr. Zuker said he is only asking because they are the direct abutters to the Applicant's family.

Mr. Macchi said that everyone around them is in favor of this.

Mr. Zuker read the Board comments into the record, he noted that the Town Engineer said that: 1) it is requested that the applicant's engineer provide this department with a blow-up version of lot 1 which will more clearly show that the Zoning Circle fits totally within the boundaries of the lot which will more clearly show that the Zoning Circle fits totally within the boundaries of the lot. 2.) The purpose of the designated "No Build Area" should be specified on the plans and discussed. The Conservation Commission, Walpole Fire Department, Police Department and Planning Board all had no comment. Mr. Zuker then went on to say that a variance is a very hard threshold. The Board did not write the Bylaw or case law. The variance does involve the impact on the neighborhood but there are also other criteria and standards that need to be met. Obviously there is a lot of neighbor support. We do not get too many cases where we have this much support.

Mr. Macchi said that everyone who it would directly affect is here to support it. It is a benefit to the public good and it doesn't go far from the Bylaw.

Mr. Zuker said that the challenge he has is what is to stop other people from coming forward to get a variance and use this case as their argument.

Mr. Macchi wanted to know how often the Board gets a case where every abutter is there to support the case.

Mr. Zuker said that is important in a variance but it is not the only deciding factor to consider.

Mr. Macchi said that there is not one person who is against this. Is there really a detriment? He does not believe that this particular case is going to be a precedent setting issue.

Janis Selett of 257 High Plain Street said that the property was originally going to be 2 lots but it became merged. It is not like someone is coming before the Board to separate the lot. It was one lot before. It had been unknowingly transferred into 2 lots.

Mr. Hiltz said that merger by common ownership is pretty basic. We have non-conforming lots. The Town as a whole has set a zoning requirement setting it as 20,000 square feet.

Mr. Macchi said he understands what Mr. Hiltz is saying however the only thing the bank looks at is if it is a buildable lot.

Mr. Hiltz mentioned that when you buy a house you have your attorney present.

Mr. Macchi stated that the Attorney you bring to a closing with you only certifies that the property is good for a mortgage.

Mr. Zuker said that it is neither here nor there because the property is already merged.

Mr. Hiltz wanted to know why this variance would not go directly against the intent of merger by ownership.

Mr. Macchi said the underline basis of this merger was in the 1950's after World War 2. They were building subdivisions everywhere. They were all small lots. They checker boarded them. A lot of lots do not meet today's standards. He went on to say that the Applicant has met the sideline, the setback, and circle. This plan was designed so that there was only one variance. They are meeting every requirement other than area.

Mr. Zuker stated that it is an important one to meet.

Mr. Macchi said that no one has a problem with this, even the other Boards.

Mr. Hiltz said that the Town requires 20,000 not 15,000 square feet. They would have specified the zone as being General Residence. It seems like we are acting on behalf of the Town to say this area should be a General Residence Zone and not considered a Residence B Zone.

Mr. Macchi said if you look at the 4 criteria we meet them. He understands where the Board is going. He believes that the Board needs a little humanity. How many cases do you get that has every neighbor in support of a project?

Mr. Zuker stated that he understands that there is always a human element however he cannot disregard what the law and the zone says. He does respect the human side of it and it is nice to see all of the support from the neighbors. With that said it seems that we have taken everything in. I do not know if the Board will vote on this tonight.

A motion was made by Mr. DeCelle, seconded by Ms. Coffey to close the public hearing.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey and Murphy voting)

A motion was made by Ms. Murphy, seconded by Mr. Hiltz, on behalf of the applicant, to approve a Variance from Section 6-B of the Zoning Bylaw which requires an area variance as shown on a plan entitled Zoning Board of Appeals, #263 High Plain Street, Plan of Land in Walpole, MA, Scale: 1"=20', March 17, 2014, Glossa Engineering, Inc., 46 East Street, East Walpole, MA 508-668-4401

The vote was **0-5-0** in opposition (Zuker, DeCelle, Hiltz, Coffey and Murphy voting); therefore the application for a **Variance** under Section 6-B is hereby **denied**.

#### **REASONS FOR DECISION:**

It is the finding of the Board that the applicant has not met the requirements for a Variance under Section 2.3 of the Zoning Bylaw in that:

- 1. Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located.*

The Board finds that the applicant has not demonstrated a need relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which the property is located.

- 2. A literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner.*

The Board finds that the applicant has not shown substantial hardship, financial or otherwise. If there was hardship, it was self-imposed.

- 3. Desirable relief may be granted without substantial detriment to the public good*

The Board finds that while many abutters were in favor of the variance the Board has to look at the Town Zoning Bylaw. They cannot ignore the will of the Town. Therefore the

Board finds the applicant has failed to show the variance would not be detriment to the public good

**4. *Desirable relief may be granted without nullifying or substantially derogating from the intent and purpose of this Bylaw.***

The Board finds that the residence is located in a Residence B, and therefore, the Variance may not be granted without nullifying or derogating from the intent or purpose of this bylaw.

**7:00 pm – Kosta Corporation – Case #5-15**

Mr. Zuker read the public hearing notice for KOSTA CORPORATION, CASE #5-15 with respect to property located at 1049 Main Street, Walpole, MA and shown on the Assessors Map 33 and Lot No. 355, Central Business Zoning District.

The application is for:

A VARIANCE from Section 6-B (c) of the Zoning By-Laws to allow reduced rear yard setback from CBD 10' minimum (allowed) to 5'-0" as noted on the attached plan.

Kevin Uniacke of UDA Architects representing the applicant said that they have provided drawings of what they are proposing. He introduced Donna Sidiropoulos who is the owner of Red Cherry.

Ms. Sidiropoulos said that they need extra storage and prep space. They would like to add food to the menu. This past winter we closed which did not make sense economically.

Mr. Uniacke said that the applicant has an existing setback of 2.4 feet and it would be increased to 5 feet. The area encroachment has increased. We are bringing the building a little farther off the line. He asked the Board to look at the site plan with the red lined diagram that he had submitted with his application.

Mr. Zuker wanted to know if the shed was attached to the property.

Mr. Uniacke said that the shed is touching but it is not significant to the building. It is not structurally connected.

Mr. Zuker said but it is part of the building.

Mr. Uniacke said that they have the Building Inspectors support.

Mr. DeCelle noted that the plan is not signed by a Certified Land Surveyor.

Mr. Uniacke said that he does have a copy of the signed plan.

Mr. DeCelle said that they need to get a land surveyor not a civil engineer to sign it. Anything that shows setback has to be signed. He then asked if the patio is just a concrete pad.

Mr. Uniacke said yes.

Mr. DeCelle wanted to know if there were going to be tables out there.

Mr. Uniacke said yes.

Mr. DeCelle asked if the side with the proposed sandwich shop will be separate.

The Applicant said that it will be kept as one open space.

Mr. Uniacke said that they need more storage and prep space.

Ms. Murphy wanted to know why they don't just use the already existing patio area.

Mr. Uniacke said that they would lose much needed parking spaces.

Mr. DeCelle said they need 9 spaces for the requirement and they probably need some additional parking as well.

Mr. Zuker said that it does seem the patio area could be used for extra space.

Mr. Uniacke said then they would have to move all of the plumbing.

Jim Landmead who was there representing the Epiphany Church stated that their only problem was not the sidelines but the noise. They have a tenant who lives right next door to the applicant's property. The consensus is that there is more noise now than there was prior. He wanted to know if there was any way for the fans and compressors to be dampened. The tenants are above the fence line. Their only concern is the noise.

Mr. Zuker thanked the resident for his comments. He wanted to know what kind of food they were thinking about serving.

The Applicant said they are planning to serve Panini's, sandwiches and salads.

Mr. Uniacke said that the vent is on the roof. The former pizza oven has been removed. They want to have a dozen seats.

Mr. Zuker read the Board comments into the record: The Building Department said: the Building Department has no objection to this request for relief. The proposal will provide additional space to expand the owner's food prep operation enabling him to expand his offerings. We have heard from a representative of the church, the most affected abutter, and they spoke in support of the petition. We understand this is a request for a variance and the statutory requirements for the grant of a variance must be met. If the Board finds the petitioner meets the requirement for the

granting of a variance, we will work with the petitioner to ensure compliance with the Zoning By-Law and the Massachusetts State Building Code. The Board of Health stated: that there are no specific issues with the proposed expansion of the Red Cherry establishment with the understanding that the establishment will temporarily close during construction and require an inspection by the Health Department before reopening, and that the location of the dumpster is far enough away that it does not create a public health hazard for customers enjoying the outside eating area. The Town Engineer stated: 1.) The applicant should clarify what work is actually being proposed under the current filing. The application references a rear yard variance request, but the above-noted plan indicates fair amount of site work on the northeasterly side of the building, including relocation of a dumpster, new landscape area and creation of parking spaces. 2) The applicant should allow the existing utilities, i.e. sewer and water on the plan in order to determine that they will not be impacted by the construction of the read addition, or any other anticipated work. The Conservation Commission reviewed the application and plan at their meeting on May 13, 2015 and stated this filing is not within their jurisdiction. The Fire Departments and Police Department have no concerns.

Ms. Murphy asked if there is landscaping there now.

Mr. Uniacke stated that there is a fence. They have seasonal landscaping that can be moved. Nothing is in the ground.

Mr. Zuker thanked the applicant for providing a great service to the town. Our Zoning Bylaw is our Zoning Bylaw and it is a high threshold to meet for a variance.

Mr. Uniacke stated that the proposed project would be an economic benefit to the town.

Mr. Zuker stated that there is an existing 2.3 foot setback and it is getting increased. There is some importance to that.

Ms. Murphy wanted to know where the dumpster was going to go.

Mr. DeCelle said that it shows it on the plan. He wanted to know what the Town Engineer wanted on the plan.

Mr. Hiltz referenced the Zoning Bylaws page 61, Section 9 C. states an existing nonconforming building, other than a one-family or two-family dwelling, which is nonconforming with respect to another requirement of Section 6.B., other than a minimum yard setback, may be enlarged or extended with a special permit from the Board of Appeals in accordance with the provisions of §2.2 of this Bylaw, provided that the Board of Appeals finds that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming building.

Mr. Zuker said they are applying under Section 6B.

Mr. Hiltz said other than a 1 or 2 family dwelling it can be enlarged in any other direction. That is what B is saying. I think C is if you have 2 non-conforming.

Mr. Zuker said that those can be enlarged or extended, anything other than required setbacks.

Mr. Hiltz said the way he was reading C was that if it was a setback and something else. If there are 2 non-conformities it may be enlarged. Unfortunately the applicant only has one non-conformity. He felt the justification for the variance would be the shape of the lot.

Mr. Uniacke stated that the addition is really tucked back and they would clean up the back area.

Mr. Hiltz felt the applicant was limited because of the triangular nature of the lot. Therefore the applicant is prohibited from going forward.

Mr. Uniacke felt what the applicant was proposing will create something more useful.

Mr. Hiltz wanted to know what the height of the shed was currently.

Mr. Uniacke said the shed is 9 to 10 feet tall. The addition will be the same. It is non-intrusive.

Mr. Zuker noted that Ms. Murphy wanted to know why the applicant could not add onto the other side.

Mr. Uniacke stated that there would be a lot of excavation. The other area is open storage and they would move some moveable freezers.

Mr. Zuker wanted to know if any of the Board members had anything else to add to the record.

Mr. DeCelle wanted to know if the applicant would be getting a new plan with the information that the Town Engineer wanted on it. Also he asked for some more information to satisfy the church regarding the noise.

Mr. Uniacke said for the next meeting we need to identify the noise and figure out a solution per the churches request, they had a question of where we are going to move the compressors. We are thinking the ground might be the best place. They are currently in the area of the new addition.

Mr. DeCelle said that the applicant needs to show it on the plan.

Mr. Zuker said it is probably noisier than before because people are actually going in there.

Mr. Hiltz wanted to know why the back wall has to be where it is.

Mr. Uniacke stated that this was looked at as a conforming oblong shape. It is a pizza pie shape addition. If you take it from the existing corner, because of the shallow triangular shape there was a lot of area you could not use. This is as small as we can make it and make it work. If I'm

looking at the existing wall and say this is my conforming addition because it is shallower and has a triangular shape. There was just not useable area.

Mr. Zuker said that if you use the shed as your footprint it gives you extra space.

Mr. Hiltz said because the applicant plans to elongate the building you are extending the non-conformity.

The Applicant said that the building is an odd shape and the shed area would not provide us with the storage we are looking for. We want to add a walk in cooler.

Mr. Uniacke said that the cooler is the driving force. We have looked at many different options.

Mr. Zuker asked what everyone else on the Board thought.

Ms. Murphy said a new plan would make it easier to understand what they are trying to do.

Mr. Zuker added that the Board needs to see and hear why you cannot put the addition someplace else.

The Applicant said if we do make an addition on that side of the building, it would affect the look of the center more. The addition we are showing would not show from the center of town. If we put it on the other side you would clearly see it. It also would take away from the patio area which is very pretty and our customers enjoy. The addition we are proposing in the back makes sense for us in terms of flow. We need the coolers to be accessible and our prep stations need to be near the frozen yogurt machines.

Mr. Uniacke stated that if they did the addition to the other side that would not help them in anyway.

The Applicant said in our existing kitchen is where we would like the cooler area. It needs to be right there.

Mr. Foley wanted to know what the buffer is as of right now.

Mr. Uniacke said that the buffer is an arborvitae tree fence.

Mr. Zuker wanted to know if the applicant spoke with the church to see if they could buy any land off of them.

The Applicant said that the church did not have anything that they could give them.

Mr. Landmead said the property line is very close.

Mr. DeCelle said that if it is at all possible for the applicant to show the church on the plan as well that would be helpful.

Mr. Hiltz said that he would be interested to know what the area that is non-conforming today and what is being proposed.

Mr. Zuker asked if the June 17, 2015 meeting date would work for the applicant to be continued to. He also asked the applicant if it would be OK for the Board to walk behind the building before the next meeting.

The Applicant said it would work and they are welcome to look behind the building.

A motion was made by Mr. DeCelle, seconded by Mr. Zuker to continue the public hearing to June 17, 2015 at 7:00 pm in the Main Meeting Room of the Town Hall.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey & Murphy voting)

A motion was made by Mr. Hiltz, seconded by Mr. Foley to adjourn the meeting at 9:23 p.m.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey & Murphy voting)

Craig W. Hiltz  
Clerk

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Minutes were approved on August 12, 2015.